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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,930	02/12/2004	Adrian M. Romanyszyn	L-0170.99	5488

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EXAMINER

BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,930

Applicant(s)

ROMANYSZYN, ADRIAN M.

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 18, 19 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-13, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 33-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the carbonator having a "semi-oblong shaped cross-section", as recited by instant claims 5 and 36 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 36 are vague and indefinite in view of the recitation of a carbonator having a "semi-oblong shaped cross-section", which is neither shown in the drawings or discussed within the specification with such specificity, so as to indicate the metes and bounds of the claims with respect to the phrase.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 9, 33-35, and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Reynolds et al (Figs. 3, 4, and 12; col. 10, lines 25-44; col. 12, lines 28-54).

Applicant should note that the reference clearly discloses a carbonator including an interior volume, wherein a cross-sectional plane therethrough on an angle of, for example 5 degrees from horizontal would provide a cross-sectional slice that is oblong or oval in shape. Furthermore the vertical dimension of such a cross-section would be one of the shorter dimensions relative to the housing. Applicant should also note that claims including such relative terms as "reduced" or "increased", as stated by instant

claims 1, 9, and 40, without providing a clear basis for analyzing the relative term cannot be considered to be patentable over the prior art on the basis of such relative terms. With respect to new independent claim 33, given the cross-section through the Reynolds et al device, as discussed above, such clearly meets that as recited by claim 33.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al.

Reynolds et al (Figs. 3, 4, and 12; col. 10, lines 25-44; col. 12, lines 28-54) as applied above substantially disclose applicant's invention as recited by instant claims 5 and 36, except for the device having a short cross-section of "semi-oblong shape". Wherein the reference clearly discloses a carbonator having a cross-section of slight vertical extent of "oblong" or "oval" shape, it would have been obvious for an artisan at the time of the invention, to modify the shape of the Reynolds et al device slightly, so as to possess a "semi-oblong" shape, the modification not otherwise effecting the operation of the device.

8. Claims 6-8, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al as applied to claims 1 and 33 above, and further in view of the admitted prior art, such as embodied by Schroeder '981.

Reynolds et al (Figs. 3, 4, and 12; col. 10, lines 25-44; col. 12, lines 28-54) as applied above substantially disclose applicant's invention as recited by instant claims 6-8, and 37-39, except for the carbonator being cast directly within a cold plate.

Applicant, at page 2 of the instant specification, admits that it was known at the time of his invention, to provide a carbonator directly within a cold plate. In connection therewith, applicant cited Schroeder '981, which clearly discloses (Fig. 2, col. 3, lines 17-20) a carbonator disposed within a cold plate, the combined device being provided at an incline, which provides a carbonator having a reduced vertical profile when in use. See Fig. 2 of Schroeder '981. It would have been obvious for an artisan at the time of the invention, to modify the carbonator of Reynolds et al to include a surrounding cold plate, as is well known within the admitted prior art, and to provide such combined carbonator and cold plate at an incline during use, to reduce the vertical profile of such, as suggested specifically as advantageous by Schroeder '981.

Allowable Subject Matter

9. Claims 10-13, 18, and 19 are allowed for the reasons of record.

Response to Arguments

10. Applicant's arguments with respect to claims 1-9, and 33-40 have been considered but are moot in view of the new grounds of rejection.

With respect to instant claims 1-4, and 9, although the claims are rejected herein under the same prior art and statute as in the prior Office action, the claims have been so changed by applicant's amendment filed May 2, 2006, that the rationale has also been modified as set forth above. The rejections of claims 1-4, and 9 are thus considered to be new grounds of rejection, necessitated by applicant's amendment filed May 2, 2006. With respect to the remaining rejected claims, such have been rejected under completely new grounds, which were necessitated by applicant's amendment filed May 2, 2006.

Conclusion

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Scott Bushey
Primary Examiner
Art Unit 1724


6-12-06

csb
6-12-06